

**UNITED STATES
PATENT AND TRADEMARK OFFICE**

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Patent Public Advisory Committee
Quarterly Meeting

Diversion Comes to the USPTO

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Need For Positive Change – Statistics of Attorney Impairment

- **A 2016 ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation published a study of 13,000 currently-practicing attorneys and found the following:**
 - Between 21-36% qualify as problem drinkers
 - Approximately 28% struggle with some level of depression
 - 19% struggle with anxiety
 - 23% struggle with stress**Other difficulties include suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, and complaints of work-life conflict.**

Diversion – Path To Lawyer Well-Being

Purpose

- Available to practitioners whose physical, mental, or emotional health issues (*e.g.*, drug or alcohol abuse, gambling, law practice management deficiencies) resulted in minor misconduct with little or no harm to a client.
- Provide the impaired practitioner with an opportunity to remedy the underlying cause of the practitioner's minor misconduct outside of the formal disciplinary process.
- Protect the public by attempting to eliminate the underlying cause of the practitioner's misconduct, thus reducing the likelihood that the misconduct will recur or escalate.

OED Pilot Diversion Program

Path to Lawyer Well-Being – Criteria

- Willingness and ability to participate in a Diversion program
- No public discipline by the USPTO or another jurisdiction in the past three years
- Misconduct at issue must not:
 - **Involve misappropriation of funds or dishonesty, fraud, deceit, or misrepresentation;**
 - **Result in or be likely to result in substantial prejudice to a client or other person;**
 - **Constitute a “serious crime”;** or
 - **Constitute part of a pattern of similar misconduct or be of the same nature as misconduct for which practitioner has been disciplined within the past five years.**

OED Pilot Diversion Program

Path to Lawyer Well-Being – Process and Policies

- Diversion plans will be based on the recommendation of the professional(s) treating the practitioner, where applicable.
- OED will monitor the practitioner's compliance with the diversion agreement by requiring periodic reporting.
- The practitioner will bear all expenses associated with complying with the terms of the diversion agreement.

OED's Collaboration with National Organization of Bar Counsel ("NOBC")

- In December 2017, OED joined forces with the NOBC in addressing lawyer well-being by serving as part of the Ad Hoc Committee on Attorney Well-Being
- OED is responsible for oversight of diversion initiatives in VA, MD, and DC, and will:
 - Monitor how these jurisdictions are rolling out the Wellness Report contents to their constituent members
 - Make recommendations as to programs, CLE presentations, and other means to implement the contents of the Wellness Report

Questions and Comments

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